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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic reports of States parties due in 1994

Addendum

ROMANIA*

Information additional to the fourth periodic report of Romania on the implementation of the International Covenant on Civil and Political Rights

Article 2

1. The decisions No. 729/24 October 1996 and No. 69/15 April 1997 of the Constitutional Court declared as unconstitutional article 332, paragraph 3, of the Code of Criminal Procedure which allowed discrimination among convicts or between convicts and other parties concerned as being contrary to article 128 of the Constitution (on the use of appeal).

2. Through its decisions No. 463/13 November 1997 and No. 25/10 February 1998 the Constitutional Court declared unconstitutional the provisions of articles 86, paragraph 4, and 81, paragraph 4, of the Code of Criminal Procedure, in order to avoid unjust discrimination among convicts on account of wealth.

* This document contains information submitted by the Government of Romania to supplement its fourth periodic report (CCPR/C/95/Add.7).

3. The "People's Advocate" (The Ombudsman), established in conformity with the Romanian Constitution, fulfils most of the functions traditionally assigned to an ombudsman on human rights. The Constitution provides, in a concise manner, the basic principles regarding the Ombudsman: role structure, appointment, competencies, relationship with the Parliament and public authorities. His powers and means of exercising them are regulated by an Act of Parliament, Law No. 35/1997. According to the provisions of the Law, the institution must protect the rights and freedoms of citizens in relations with the public authorities. The will of the legislator was to give competence to the Ombudsman only with reference to the public administration.

4. Cases taken up within the jurisdiction of the Ombudsman are currently drawn from the following areas: administrative procedures involved in the restitution of land or house property; pensions and social benefits; rights of former political prisoners and victims of the totalitarian regime; special protection of disabled persons, protection of former employees as a result of collective firing from reorganized State-owned companies; protection of children in need; social housing; consumer rights violations by State-owned companies; police; pre-trial custody and detention of prisoners; rights of asylum-seekers and refugees.

5. The head of the Ombusman's Office is appointed by the Senate for a period of four years; he may be re-elected only once.

6. The Ombudsman has two deputies who help the Ombudsman to manage the different fields of activity of the institution. They are appointed by the Ombudsman with the agreement of the Legal Committee of the Senate.

7. The activity of the Ombudsman is carried out on the basis of complaints but it is also possible for the institution to act ex officio. The requests may be addressed only by individuals, without discrimination on account of citizenship, age, sex, political membership or religion. The request must be submitted in written form. The applicant shall prove the delay or the refusal of the public authority to find a solution to his case.

8. The Ombudsman has the legal right to order investigations, to examine, to hear and to ask for declarations. He may address the General Prosecutor or the Higher Council of Magistracy, according to their competencies. As a result of his activity he may issue recommendations addressed to public authorities, noting the illegalities and asking the public authority which caused an illegality to amend or to revoke the administrative act, to repair the damages and to reinstate the injured person concerned. In serious cases of corruption or illegalities the Ombudsman may also address reports to the Presidents of the Chambers of the Parliament or to the Prime Minister.

9. In his relation with public authorities the Ombudsman is independent and does not replace them. The public authorities help the Ombudsman to perform his duties.

10. The Ombudsman and his activity are controlled by the Parliament. The Ombudsman has to present reports to both Chambers of the Parliament every year or at the request of the Parliament. These reports include recommendations concerning modifications of the Romanian legislation or any kind of measures regarding the protection of human rights and freedoms.

11. The Ombudsman has become one of the most important institutions comparable to those of other democratic countries, based on the protection of human rights and the rule of law.

12. Concerning the claims relating to the nationalized buildings, the decision No. 1/1998 of the Supreme Court of Justice established that the judiciary instances are competent to decide upon the restitution of these buildings. Thus, the previous decision No. 1/1995 of the Supreme Court declaring the instances incompetent in these law cases was cancelled.

13. Likewise, Law No. 213/1998 on the legal regime of public property provides, in article 6, the competence of law courts to solve all claims pertaining to buildings taken over through nationalization from their former owners.

14. The Department for the Protection of National Minorities drew up several draft laws concerning the restitution of the real estate as follows:

Emergency Ordinance No. 21/1997 concerning the restitution of real estate belonging to the Jewish Community.

Emergency Ordinances No. 13/1998 and No. 83/1999 concerning the restitution of real estate belonging to the community of citizens members of national minorities;

Emergency Ordinance No. 112/1998 on the restitution of real estate belonging to the religious denominations of the national minorities.

Article 3

15. The presentation of the legislative framework ensuring "the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant" was updated in the fourth report of Romania submitted to the secretariat of the Committee on the Elimination of Discrimination against Women (CEDAW), in December 1998.

16. The government machinery for the advancement of women (set up in 1995) designed two draft laws which are currently under debate in the Parliament of Romania, i.e. the draft law on equality of opportunities for women and men and the draft law on paternal leave.

17. The draft law on equality of opportunities guarantees equal chances to women and men in all fields of activity of social life and establishes the obligation of the public authorities to take measures to implement these legal provisions. The bill defines sex-related direct and indirect discrimination and prohibits its manifestation in labour relations, salaries, the granting of social rights, professional training and promotion. The draft law on paternal leave promotes the principle of sharing of family and child rearing responsibilities between parents.

Article 8

18. On 3 August 1998, Romania ratified International Labour Organization Convention No. 105 (1957) concerning the Abolition of Forced Labour. Thus, Romania became party to all the basic ILO conventions.

Article 9

19. Through decision No. 60/1994 of the Constitutional Court the provisions of article 149 (final paragraph) of the Code of Criminal Procedure were declared unconstitutional if interpreted with the meaning that the duration of detention during trial could exceed 30 days without needing an extension. The Constitutional Court concluded that the duration of the detention of an accused person cannot exceed 30 days and when this period expires, during the trial, the Court can decide to extend it for at most 30 days, after an ex officio verification of its necessity.

20. Decision No. 45 of 10 March 1998 of the Constitutional Court deals with the right to reparation for a person illegally arrested or detained.

21. Decree-Law No. 118/1990, republished on 3 September 1990 as Law No. 63/1996, establishes one of the reparatory measures for persons who were politically prosecuted or arrested, hospitalized in psychiatric establishments, had forced residence imposed on them or were forcibly displaced. Thus, for every year of detention, arrest, abusive hospitalization or deportation, a certain reparatory amount of money shall be paid.

Article 10

22 At the beginning of 1999, the Ministry of Justice worked out a draft law on the execution of punishments and preventive measures that will replace Law No. 23/1969. This bill establishes, as an innovation, the principle of differentiated penitentiary regimes, i.e. closed detention, partially open detention and open detention. The penitentiary regime is established in keeping with the degree of social danger posed by the offence, sentence, previous criminal records, age, state of health, responsiveness to the rehabilitation programmes, etc. Moreover, the bill provides the right to complain against the executor judge.

Article 12

23. Law No. 15 of 12 April 1996 on the status and regime of refugees in Romania stipulates inter alia the right of refugees to settle in Romania, to have a residence and move freely, in conformity with the legislation for foreigners.

Article 13

24. In May 1997, Romania ratified the European Convention on Extradition, as well as the First and Second Additional Protocols to this legal instrument.

25. In conformity with Law No. 15/1996 on the status and regime of refugees in Romania, refugees cannot be expelled or returned except for reasons of nationals safety or public order. In the latter case, the refugees cannot be returned to countries where their life or freedom are threatened.

Article 14

26. Decision No. 486 of December 1997 of the Constitutional Court dealt with the interpretation of the right to access to justice. It estimated as unconstitutional article 278 of the Code of Criminal Procedure, according to which a complaint against measures taken by the Prosecutor can only be solved by the Prosecutor's Department at a higher level of the hierarchy, while the law does not provide any way of appealing against this solution. The Constitutional Court decided that any measure taken during a criminal trial is also subject to the control of judicial instances.

27. The right to access to a law court was also defined in article 2 of Law No. 142/1997, which stipulates: "Every person can appeal to justice for the defence of one's rights, liberties and legitimate interests. No law can hamper the exercise of this right."

28. Law No. 142/1997 introduced several amendments and additions to Law No. 92/1992 (Organization of Justice Act) concerning the judicial authority. New article 1 stipulates: "The judicial authority consists of the judicial bodies, the Public Ministry and the Higher Council of the Magistracy ..."

29. Article 19 of Law No. 92/1992 was modified on the basis of recommendations by the international organizations as follows:

> "The Higher Council of the Magistracy and the Minister of Justice shall ensure respect for the independence of justice.
>
> "The Minister of Justice shall be responsible for the proper organization and running of justice as a public service. The Minister of Justice shall be apprised by inspector judges of the courts of appeal of the functioning of the instances and of any facts liable to compromise the quality of work or the application of laws and regulations in the appeal courts constituencies.
>
> "The Presidents and Vice-Presidents of the courts shall carry out verifications of the quality of work and of compliance with the laws and regulations in the services attached to the courts they direct and in the courts within their judicial districts. The Presidents of the courts of appeal shall also exercise that right through the inspector judges of those courts.
>
> "These verifications shall never lead to acts of interference in the ongoing trials or to the reconsideration of what has already been decided. The competence of the Ministry of Justice provided by law with respect to the judicial ways of appeal shall not be considered acts of interference."

The rights of the Ministry of Justice concerning the methods of appeal are justified by the need to ensure a uniform interpretation and enforcement of the law throughout the country.

30. With reference to the progress achieved in the field of the judicial authority, it is also noteworthy that Law 89/1996 amended article 129, paragraph 2, of Law No. 92/1992 (Organization of Justice Act). In order to avoid extensions of the time during which judges shall be granted the status of irremovability, Law No. 89/1996 stipulated, in its sole article, that judges of the courts should be appointed by the President of Romania until 30 October 1996, and thus should become irremovable from that moment. At present, all judges of the court throughout Romania, except for trainees, are irremovable.

31. To ensure the right to a fair trial, article 330 of the Code of Civil Procedure allowing the utilization, at any moment, of the procedure of cancelling appeal against an irrevocable sentence was amended by Law No. 17/1997. It established a time limit of six months for this procedure.

32. Moreover, through decisions No. 463/1997 and No. 25/1998 of the Constitutional Court, articles 81, paragraph 4, and 86, paragraph 4, of the Criminal Code, relating to the conditional suspension or supervised suspension of the execution of penalties, were declared unconstitutional. Thus, it was decided that the obligation "of the convicted person to repair a damage which he/she had not created or produced to the extent to which it was alleged by the injured party is contrary to the right to a fair trial enshrined in the Constitution and in the international conventions".

33. Law No. 141/1996 introduced a series of amendments to the Code of Criminal Procedure. Through the modification of article 385, paragraph 1 (6), a new reason for appeal was introduced, namely the situation where a trial took place in the absence of a defender whose presence was obligatory.

Article 17

34. Law No. 74/1996 relating to telecommunications stipulates in article 4:

> "1. The suppliers of telecommunications services and their staff shall ensure the confidentiality of any information about the users of the telecommunications ... It is forbidden to intercept the talks or communications carried out by telephone, telegraph or any other means of communication and any provision of information about them.
>
> "2. The talks or communications carried out by any means of communication can be intercepted only in the cases provided for by law, by the bodies authorized by law, with an authorization issued by a prosecutor appointed by the General Prosecutor of Romania or by the Prime-Prosecutor of the Public Prosecutor's Office attached to the Court of Appeal."

35. On the other hand, Law No. 83/1996 on post services provides in article 4: "The secret of letters, telegrams and of other dispatches is guaranteed by law. Every person carrying out post office activities shall ensure the confidentiality of mail or other dispatches. It is forbidden to violate or reveal the content of the mail or of other post."

Article 18

36. The freedom of parents to ensure the religious and moral education of their children, in conformity with their convictions, is reflected in article 9 of Law No. 84/1995 on education. It stipulates: "The curricula for primary, general, secondary and vocational education include religion as a basic school subject. Attendance at religion classes is in accordance with religious and confessional denomination."

37. Article 15 of Law No. 15/1996 on the status and regime of refugees contains provisions relating to the right of parents to decide on their children's education.

Article 24

38. Law No. 108/1998 provides protection for children in difficulty. With a view to protecting the interests of children in difficulty the following measures can be undertaken:

(a) Entrusting the child to a family, to a person or to a private authorized body;

(b) Entrusting the child for adoption;

(c) Entrusting the child temporarily to a specialized public body;

(d) Placing the child with a family or a person;

(e) Placing the child in a specialized public institution or a specialized private body;

(f) Placing the child in emergency treatment;

(g) Placing the child with an assisted family.

The selection of one of the aforementioned measures is done in keeping with the principle of reasonable continuity, in the child's education, with his ethnic, religious, cultural or linguistic origin.

39. Another aspect of child protection is regulated by Law No. 120/1997. Article 1 of this law provides: "the right of women insured under the State social insurance or the social insurance system for farmers, and of women who are military workers, to leave for childcare, in addition to the maternity leave of 112 days provided for by the regulations in force". In article 2 it is stipulated that "The period of leave for childcare until the age of two is calculated as work seniority". As a novelty for Romanian legislation, according to article 6 of Law 120/1997, "any of the child's parents may benefit on an optional basis from the provisions of the law".

40. Law No. 61/1993 on State allowance for children refers to children until the age of 18 (including handicapped children). This legal instrument was completed by Law No. 261/1999, which stipulates the granting of the State allowance also to young people beyond the age of 18, until the completion of secondary school or vocational school studies. The State allowance for

children is also granted to the children of foreign citizens and of stateless residents, if they live in Romania together with their parents. Thus, in 1998, 5.1 million children were granted a State allowance (the sum total amounting to 4,000 billion lei).

41. With a view to assisting large families, Law No. 119/1997 provides an additional allowance for families with two or more children. In 1998, 1,133,070 families with children benefited from the additional allowance (the total accounting for 764 billion lei).

Article 25

42. In conformity with Law No. 27/1996 on political parties (art. 5) "no person can be compelled to belong or not to belong to a political party", "the acquisition or loss of the status of membership in a political party does not create priorities or limitations with respect to citizens' rights".

43. In 1996, following the parliamentary elections, persons belonging to national minorities obtained 40 seats in the Chamber of Deputies and 11 seats in the Senate.

44. As for the local elections, a considerable number of persons belonging to national minorities were elected to the local administrative structures as mayors or councillors of the communes and counties:

The Democratic Union of Magyars of Romania (UDMR) - 2445 local councillors, 4 deputy chairmen of county councils;

The Democratic Forum of the Germans - 889 local councillors, 4 county councillors, 5 mayors;

The Roma Party - 137 local councillors, 21 county councillors, 1 mayor;

The Union of the Ukrainians - 21 local councillors, 2 county councillors;

The Union of Serbians - 21 local councillors, 1 county councillor, 1 mayor;

The Community of the Russian Lipovans - 34 local councillors, 4 county councillors, 1 mayor;

The Democratic Union of the Slovaks and Czechs - 27 local councillors, 2 mayors;

The Democratic Union of the Turk-Muslim Tatars - 10 local councillors, 1 county councillor.

45. Two persons belonging to national minorities have been appointed prefects and eight deputy prefects.

46. At present, the Democratic Union of Magyars of Romania is represented at the governmental level by the Minister of Health, the Minister designated by the Prime Minister for national minorities, the Deputy Secretary General of the Government and the State Secretary of the Department for the Protection of National Minorities.

Article 27

47. In 1997, in accordance with the provisions of Government Ordinance No. 17/1997, the Department for the Protection of National Minorities was set up. This new Department functions as a Romanian government department under the supervision of the Prime Minister. The Head of the Department, the Minister designated by the Prime Minister for national minorities is a member of the Government.

48. The main attributions of the Department are:

To elaborate draft laws and other legal documents in its field of activity;

To approve draft laws and legal documents on national minorities as recommended by the Council of National Minorities;

To monitor the implementation of national and international documents on the protection of national minorities;

To supervise the unitary implementation of the legal provisions on the protection of national minorities by the public authorities;

To receive and examine complaints from institutions, organizations and bodies in relation to local administration acts against national minorities' rights and to communicate the legal point of view;

To establish and develop contacts with governmental or non-governmental organizations from the country or abroad and with international organizations for national minorities;

To promote and organize programmes on the preservation, expression and development of the ethnical, cultural, religious and language identity of the national minorities;

To carry out other assignments from the Government or the Prime Minister.

49. Within the Department for the Protection of National Minorities, the National Office for Roma functions as a specific organization to initiate, support and coordinate pro-Roma actions.

50. In order to accomplish the provisions of the Government Ordinance No. 17/1997, the Inter-Ministerial Committee for National Minorities was set up as a consultative body including one representative of each of the following ministers and departments:

Department for National Minorities;

Ministry of National Education - Department for National Minorities;

Ministry of Culture - Department for National Minorities;

Ministry of Labour and Social Protection;

Ministry of Foreign Affairs - Department for Human Rights and the Council of Europe;

Ministry of Justice;

Ministry of Health;

Ministry of National Defence;

Ministry of Agriculture and Food;

Ministry of the Interior;

Ministry for Public Work and Local Administration;

Department for the Relationship with the Parliament;

State Secretariat for Religious Affairs;

Department for European Integration;

Department for Child Protection.

51. In accordance with Government Ordinance No. 459/1998, the Sub-Committee for the Roma Minority was set up, having as a principal competence to design a specific strategy for the protection of the Roma minority.

52. The main competence of the Inter-Ministerial Committee are:

To support the Department for the Protection of National Minorities in its activity by providing the necessary information;

To contribute to a uniform strategy on the protection of national minorities;

To issue annual reports on the implementation of the provisions of the framework Convention on the Protection of National Minorities and other international documents to which Romania has adhered, as well as the domestic programmes concerning the protection of national minorities.

53. A draft law on the public administration and the general regime of local autonomy, aimed at amending Law No. 69/1991, is being debated by the Parliament. Some provisions of this bill are particularly relevant for the ethnic minorities:

In the administrative territorial units where persons belonging to a national minority account for over 20 per cent of the inhabitants, these citizens can also use their mother tongue to address the representatives of the local public administration;

The names of these localities and of the public institutions under their authority can also be translated into the mother tongue of the respective minority.

54. The Law on Education No. 84/1995 was modified through Government Ordinance No. 36/1997 that introduced new provisions concerning the right of national minorities to be taught in their mother tongue:

"Article 46

"(1) The Romanian Language and Literature are taught in primary schools according to curricula and textbooks especially conceived for the respective minorities. In the general and secondary schools Romanian Language and Literature curricula and textbooks are the same as for the classes where tuition is offered in Romanian."

"(2) In primary schools, the History and Geography of Romania are taught in the mother tongues on the basis of the same curricula and textbooks as for the classes where tuition is offered in Romanian, with the obligation of assuring the transposition and assimilation of the toponymy of the Romanian proper nouns in the Romanian language. In general and secondary schools, the History and Geography of Romania are taught in the Romanian language on the basis of the same curricula and textbooks as for the classes where tuition is offered in Romanian. History and Geography of Romania examinations shall be in the mother tongue."

"Article 48

"(1) In public university education, sections, groups, colleges and faculties with tuition in the mother tongue may be established upon request and in accordance with the present Law. In this case, the assimilation of the specialized terminology in the Romanian language shall be assured. Upon request and under the law, multicultural universities may be established. The teaching language shall be established according to the law."

"(2) Persons belonging to national minorities have the right to set up and administer their private universities in accordance with the law."

"(3) The higher education institutions with multicultural structures and activities will be encouraged to promote harmonious inter-ethnic relations and integration, both at the national and European levels."